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Supreme Court of the United States

OCTOBER TERM, 1964

No. 26

WHITNEY NATIONAL BANK IN JEFFERSON PARISH,
Petitioner,

versus

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.,
Respondents.

No. 30

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY,
Petitioner,

versus

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.,
Respondents.

BRIEF OF LOUISIANA STATE BANK COMMISSIONER IN OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963.

No. 763.

WHITNEY NATIONAL BANK IN JEFFERSON PARISH,
Petitioner,

versus

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.,
Respondents.

No. 798.

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY,
Petitioner,

versus

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.,
Respondents.

BRIEF OF LOUISIANA STATE BANK COMMISSIONER IN OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Respondent, the State Bank Commissioner of Louisiana, respectfully suggests that the opinion and decree

of the United States Court of Appeals for the District of Columbia Circuit, reported at 323 F.2d 270; is correct, and that accordingly the application to review this decision should be denied.

QUESTION PRESENTED.

Whether the Comptroller of the Currency was properly enjoined from his attempt to permit the Whitney National Bank of New Orleans ("Whitney New Orleans"), the largest bank in the State of Louisiana by far, to utilize the device of a holding company created and financed by it for the sole purpose of circumventing and evading limitations imposed by the National Bank Act and the laws of Louisiana on establishment of branch banks.

STATEMENT.

In order to avoid repetition insofar as possible, the State Bank Commissioner of Louisiana adopts the Statement contained in the brief of the Respondent banks, with the following additions necessary to present the position of the State of Louisiana.

The State Bank Commissioner of Louisiana is the officer charged with the responsibility of administering the banking laws of the State, and is vitally interested in the issues involved in this case. The attempt by the Comptroller of the Currency to authorize national banks to circumvent and evade national and state limitations on the location of banking facilities through the medium of holding companies created and financed by them will

necessarily lessen competition and promote monopolistic practices in the banking industry, thereby adversely affecting state chartered banks supervised by this Respondent.

As this Honorable Court has recently had occasion to note, unlike most other countries wherein banking is concentrated in a few hands, commercial banking in this country is essentially a decentralized system of independent banks. *United States v. Philadelphia National Bank*, 374 US 321, 83 S.Ct. 1715, 10 L.Ed. 915. One link in the chain of laws designed to promote competition and preserve a decentralized banking system is §36 of the National Bank Act. This statute guarantees competitive equality between state chartered banks and national banks by providing that national banks are permitted to establish branches or additional banking facilities only when authority to do so is granted to state banks by the statutes of the state. 12 USC 36.[1]

For many years it has been the public policy of the State of Louisiana to preserve competitive equality by prohibiting banks (state or national) from establishing branches beyond the limits of the Parish (County)

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[1] *Commercial State Bank of Roseville v. Gidney*, 174 F.Supp. 770, Affirmed 278 F.2d 871 (CCA D.C. [1960]); *Gidney v. The Wayne Oakland Bank*, 252 F.2d 537, 540 (6th Cir. [1958]), Cert. denied, 358 US 830 (1958), wherein the Court stated:

> "The history of federal legislation regarding branch banking and the statutes applying thereto leave a clear and definite impression that Congress intended, with respect to the location of branches, that a national bank should have no greater rights than it would if it were a state bank, and that a national bank was to be permitted to establish and operate a branch in a State only at such a point as it could, by express provisions of a State statute, establish and operate a branch if it were then a state bank."

wherein their head offices are located. L.S.A.-R.S. 6:54, 328. This policy has served Louisiana well and under it the banking industry in this State has prospered and grown. In fact, Whitney New Orleans, admittedly restricted by the combination of federal and state law from establishing banking facilities beyond the limits of Orleans Parish, has grown to such a position of banking dominance that it possesses approximately 44% of all deposits of individuals, partnerships and corporations in Orleans Parish, and in excess of 30% of all such deposits eminating from the East Bank of the Mississippi River in Jefferson Parish held by all Jefferson Parish banks located in that area.[2]

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[2] Governor Robertson of the Federal Reserve Board, in a dissenting opinion to the decision of the Board approving the application of Whitney Holding Corporation, stated:

"Whitney National Bank of New Orleans is the largest banking institution of the City of New Orleans and the State of Louisiana. It controls in the neighborhood of 40 per cent of the deposit and loan business of all New Orleans banks—more than the second and third largest banks combined. The proposal before the Board of Governors would place control of this bank in Whitney Holding Corporation and thereby would overcome the effect of the branch banking laws of Louisiana, which prevent Whitney from establishing any offices outside of Orleans Parish (the City of New Orleans). In other words, by this means the Whitney banking organization would escape the legal limitations that now permit it to have offices only within the City of New Orleans." (J.A. 109.)

* * * * *

"The proposal before the Board would promote banking convenience in the East Bank section of metropolitan New Orleans to a moderate degree. It would also, however, provide a vehicle for enhancing the existing high degree of banking concentration in the area and would permit a centralization of banking power of major proportions in individual hands, to a degree that, to my knowledge, is without parallel in the American banking system. For these reasons, I conclude that the creation of the proposed holding company system would be contrary to the public interest and therefore should be denied." (J.A. 111.)

Faced with the legal barrier to establishing banking facilities beyond Orleans Parish imposed by the combination of federal and state statutes (12 USC 36; L.S.A.-R.S. 6:54, 328) Whitney New Orleans sought the advice, blessing and guidance of the Comptroller as to how it might circumvent these laws (J. A. 42, 43, 278). With the approval and encouragement of the Comptroller, Whitney New Orleans adopted its so-called "Reorganization Plan", more fully described in the briefs of the Respondent State Banks, admittedly for the sole purpose of circumventing and evading the limitations imposed by the National Bank Act and the Louisiana Statutes on the location of banking facilities.

There were no bank holding company operations in Louisiana until the present case arose; and to Respondent's knowledge, this is the first time that a Comptroller of the Currency has ever attempted to permit a national bank to circumvent that combination of state and federal laws limiting the establishment of branch banks through the device of a holding company financed by the bank.

When it became apparent that the Comptroller proposed to license Whitney banking offices in Jefferson Parish in contravention of L.S.A.-R.S. 6:54 and 12 USC 36, an emergency arose in the banking industry in Louisiana. The State Bank Commissioner immediately requested an opinion from the Louisiana Attorney General as to the legality of the Whitney Plan. The Attorney General ruled that the Whitney Plan violated the State laws prohibiting the establishment of

branches beyond the Parish of the bank's home office (J.A. 163, 164, 289). The Louisiana banks who are Respondents herein brought this suit against the Comptroller to enjoin him from issuing a license which would permit the consummation of the Whitney Plan on the grounds that it violated the National Bank Act. Two of these Louisiana State banks also filed a proceeding in the United States Court of Appeals for the Fifth Circuit, pursuant to §9 of the Bank Holding Company Act of 1956 (12 USC 1848) to review the action of the Board of Governors of the Federal Reserve System in approving that portion of the Whitney Plan falling within its jurisdiction (*Bank of New Orleans and Trust Company et al v. Federal Reserve Board*, CCA 5th, No. 19788).

During the pendency of the instant suit in the Trial Court, and before it was heard on the merits, the Louisiana Legislature, pursuant to the jurisdiction and power reserved to it by the Congress of the United States in the Federal Bank Holding Company Act (12 USC 1846), overwhelmingly passed a State Bank Holding Company Act. (Louisiana Act No. 275 of 1962; L.S.A.-R.S. 6:1001-1006).[3] This statute was enacted into law as emergency legislation to regulate and control State incorporated bank holding companies and their subsidiaries, and to stop the Comptroller and Whitney New Orleans from subverting the public policy of Louisiana and the statutes regulating monopolistic branch banking.

[3] Louisiana Act 275 of 1962 is set forth in its entirety in Appendix A.

§1 of Louisiana Act 275 of 1962 defines the public policy of Louisiana as follows:

> "It is declared to be the policy of this state to protect and to foster the growth of the independent unit bank, an[d] institution whose ownership and origins are grounded in the local community and whose activities are bound up with local economic and social organizations; to prevent the undesirable concentration of control in the banking field to the detriment of the public interest, to insure effective competition among all banking institutions; and, to accomplish these objectives by prohibiting the formation of new banking holding companies and the acquisition of control by whatever means of additional banking institutions by existing bank holding companies and by their subsidiaries." Acts 1962, No. 275, §1.

In addition to prohibiting holding companies from acquiring control of more than 25% of the voting shares of any bank, §3(5) of the Act rendered it unlawful for any bank holding company or subsidiary thereof to open any bank not then opened for business. Because this Act specifically prohibited the Comptroller from successfully permitting the culmination of the Whitney Plan to circumvent §36(c) of the National Bank Act, Petitioners herein promptly amended their pleadings to place the constitutionality of this statute at issue. At that point the State Bank Commissioner intervened as a petitioner to defend the Louisiana Act against this attack and to protect the public policy of the State. The United States District Court for the District of Columbia upheld the Louisiana Act as con-

stitutional; and, accordingly the Court permanently enjoined the Comptroller of the Currency from licensing a banking facility in violation of the statute.

On appeal the United States Court of Appeals for the District of Columbia Circuit affirmed the judgment of the District Court and held that on the undisputed facts the Whitney Plan was simply a corporate device by which Whitney New Orleans might establish banking facilities in Jefferson Parish in violation of 12 USC 36(c). Having found that the Comptroller was precluded by §36(c) of the National Bank Act from licensing banking facilities in Jefferson Parish, the Court found it unnecessary to decide the constitutional questons raised by the Petitioners as to Louisiana Act No. 275.

ON THE UNCONTROVERTED FACTS THE DECISION OF THE COURT OF APPEALS WAS CORRECT.

1. *The National Bank Act.* Throughout this litigation Petitioners have refused to come to grips with the issues involved in this case. Carefully ignoring the uncontroverted facts, Petitioners continue to contend that because the proposed Whitney New Orleans banking facility in Jefferson Parish would be a "separately chartered bank" (Comptroller's Petition, p. 21), it cannot be a prohibited branch of Whitney New Orleans. This position studiously ignores the fact that this case does not involve an attack on the Comptroller's discretion to charter a new national bank in Jefferson Parish. Rather, this case involves an attack on the attempt by the Comptroller to permit a national

bank, the largest in the State, to create and finance a holding company with its own funds as a medium through which to siphon bank funds to establish banking offices in an area prohibited by 12 USC 36 and L.S.A.-R.S. 6:54.

Petitioners concede that Whitney New Orleans is absolutely precluded by a combination of §36 of the National Bank Act and L.S.A.-R.S. 6:54 from establishing branch offices or additional offices in Jefferson Parish. Faced with these federal and state statutory prohibitions, Petitioners nevertheless frankly admit that Whitney New Orleans studied all available means by which it might evade these laws and finally decided to try a "holding company approach" after the Comptroller of the Currency gave his blessing and agreed to approve the merger and issue the bank charters necessary to complete the plan. For his part in consummation of the Whitney Plan the Comptroller: [1] permitted Whitney New Orleans with its own funds to create and finance Whitney Holding Corporation, a Louisiana State chartered business corporation; [2] issued a charter to a so-called "new" New Orleans bank, Crescent City National Bank ("Crescent"), capitalized by Whitney Holding with the funds supplied to it by Whitney New Orleans; [3] approved a consolidation agreement between Whitney New Orleans, Whitney Holding and Crescent, the effect of which was to place the entire outstanding capital stock of Whitney New Orleans in the holding company;[4] and [4] was prepar-

[4] After Whitney New Orleans merged into Crescent, the name of the resulting bank was immediately changed from Crescent City National Bank to Whitney National Bank of New

ing to issue a charter to a national banking association in Jefferson Parish, organized by officers and directors of Whitney New Orleans, with the name Whitney National Bank in Jefferson Parish ("Whitney Jefferson"), the entire $650,000.00 of the capital of which association was supplied by Whitney New Orleans through Whitney Holding. Only this suit precluded the Comptroller from licensing Whitney Jefferson as the last step in consummation of the plan to permit Whitney New Orleans to utilize its funds to establish banking facilities at the prohibited location in Jefferson Parish.

It is simply not a fact, as Petitioners contend, that the decision of the Court of Appeals is a threat to persons with interests in banks who seek to organize new national banks, or that the decision somehow casts doubt upon existing holding companies. There is just no resemblance between a new bank organized by individual investors with their own fresh, new capital, or a bank holding company organized and qualified to invest its capital in bank stocks, and the corporate shenanigans undertaken by Whitney New Orleans with the requisite consent, approval and cooperation of the Comptroller, designed to capitalize a holding company and through it finance wholly owned Whitney banking facilities at a location outlawed by the statutes. It is pertinent, we suggest, to inquire of Petitioners how anyone's rights are threatened, or how doubt is cast

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Orleans. Crescent was described by Governor Robertson of the Federal Reserve Board in his dissenting opinion (J.A. 110) as a "phantom" bank, since it had been chartered for the sole purpose of permitting the largest bank in Louisiana to merge into it; its name was then changed and it dropped out of the picture.

upon the status of existing holding companies or future holding companies organized for a legitimate purpose by a decision which enjoins the Federal Officer charged with administering and enforcing the provisions of the National Bank Act from using his authority to permit a national bank to evade the limitations imposed on national banks by that very Act. It is also pertinent to inquire of the Comptroller what "broad and continuing impact upon the regulation of the banking industry" can possibly result from a decision enjoining the Comptroller from improperly attempting to use his authority to permit a national bank to do indirectly that which the National Bank Act precludes him from permitting the bank to do directly.

Contrary to Petitioners' assertions that because Whitney Jefferson would be clothed with the formalities of a separate bank it could not be considered a branch of Whitney New Orleans, the Ninth Circuit Court of Appeals in the *First National Bank in Billings v. First Bank Stock Corporation*, 306 F.2d 937 (1962) specifically ruled at page 942:

> "We do not agree . . . that the fact that the two banks are separate corporate organizations demonstrates conclusively that one is not a branch of another. In the banking field, as elsewhere, courts have power to 'pierce the corporate veil' when the *realities* require it."

In the instant case by admission of the President of Whitney New Orleans the banks were organized to do business as one and were to operate as "the Whitney

organization in holding company form" (J.A. 380). The Court of Appeals in this case correctly held, consistent with the *Billings* decision and the well established principles repeatedly enunciated by this Honorable Court, that the corporate veil should be pierced when corporate forms are adopted as a means to avoid clear legislative purpose, evade regulatory statutes or defeat public policy.[5]

If the Comptroller's discretion is so broad that he may exercise it free from court inquiry or restraint to permit national banks to adopt and finance new corporate forms solely for the purpose of evading the fundamental legislative purpose underlying §36 of the National Bank Act to preserve competitive equality in the field of establishing additional banking facilities, the dual banking system cannot survive. As stated, prior to embarking on its attempt to commence interparish banking contrary to the laws designed to regu-

[5] *Northern Securities Company v. United States*, 193 US 197; *United States v. Lehigh Valley R. Co.*, 220 US 257; *Chicago, Milwaukee & St. Paul Ry. Co. v. Minneapolis Civic & Commerce Association*, 247 US 490; *United States v. Reading Co.*, 253 US 26; *Alabama Power Company v. McNinch*, 94 F.2d 601, 618 (CCA,D.C. [1938]); *Francis O. Day Co. v. Shapiro*, 267 F.2d 669 (CCA,D.C. [1959]); *Corn Products Refining Co. v. Benson*, 232 F.2d 554, 565 (CAA,2nd [1956]);

See also *Metropolitan Holding Co. v. Snyder*, 79 F.2d 263 (CCA,8th [1935]), holding that stockholders in a national bank may not organize a holding company to which they transfer stock under circumstances indicating that they hope to evade their statutory liability for debts of a national bank under the National Bank Act. This Court stated at page 267, after a review of the Federal cases in the field, that "particularly where a corporation is interposed to defeat or circumvent a statute, the courts have looked beyond [the] corporate entity to ascertain the purposes for which it was organized and the persons identified with that purpose". See also to the same effect *Corker v. Soper*, 53 F.2d 190 (CCA,5th) Cert. Denied 285 US 540.

late monopolistic branching practices, Whitney New Orleans already controlled more than 40% of the banking business available to all New Orleans banks, more than the second and third largest New Orleans banks combined, and more than 30% of the banking business available to all banks with their offices on the East Bank of the Mississippi River in Jefferson Parish. Accordingly, Whitney New Orleans already controls in excess of that portion of the market share of commercial banking in the Orleans-Jefferson Parish area found by this Honorable Court to threaten undue concentration and monopoly.[6] The impact of the physical presence of the Whitney organization in Jefferson Parish on the ability of State banks to successfully compete with the large resources at Whitney's disposal would have disastrous consequences.

Respondent respectfully suggests that the Comptroller of the Currency is the Federal Officer on whom Congress has imposed the duty to enforce its policy of maintaining competitive equality between national and state banks. Respondent further respectfully suggests that when this Federal Officer not only fails to preserve and enforce the Congressional intent expressed in the National Bank Act, but undertakes to use his authority to vitiate this policy, he should be enjoined.

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[6] In the *United States v. Philadelphia National Bank, supra*, this Court ruled:

> "The merger of appellees will result in a single bank's controlling at least 30% of the commercial banking business in the four-county Philadelphia-Metropolitan area. Without attempting to specify the smallest market share which would still be considered to threaten undue concentration, *we are clear that 30% presents that threat.*" [Emphasis supplied] (83 S.Ct. 1715, p. 1742; 10 L.Ed. 915, p. 945).

2. *Louisiana Act 275 of 1962 (L.S.A.-R.S. 6:1001-1006).* The Court of Appeals having affirmed the District Court on the ground that the opening of Whitney Jefferson is prohibited by §36(c) of the National Bank Act, found it unnecessary to consider whether the "opening is also prohibited by Act 275 of the Louisiana Legislature." The Court of Appeals did, however, rule at page 304 that the actual opening of Whitney Jefferson "would violate the state statute . . .". (Op. p. 304, Footnote 15.) On the other hand, because Act 275 rendered the Whitney Plan so clearly illegal, the District Judge enjoined the Comptroller from issuing a Certificate of Authority in violation of that Act. Respondent, the officer charged with the responsibility of administering and enforcing Act 275, respectfully suggests that the decision of the District Court was also correct.

Congress passed the Federal Bank Holding Company Act (12 USC 1841, et seq.) for the purpose of stringently controlling and regulating bank holding companies in order to stop the growing concentration of banking power. When Congress enacted this statute, it specifically recognized that holding companies could be used to vitiate the policy of the various states, and accordingly reserved to the states the right to enact legislation controlling the operation of bank holding companies within state borders. §7 of the Federal Bank Holding Company Act (12 USC 1846, 70 Stat. 133) provides:

> "RESERVATION OF RIGHTS TO STATES—The enactment by the Congress of this chapter shall

> not be construed as preventing any State from exercising such powers and jurisdiction *which it now has* or *may hereafter have* with respect to banks, bank holding companies, and subsidiaries thereof." [Emphasis supplied.]

Louisiana Act 275 was enacted pursuant to this authority. In the light of this clear reservation of power to Louisiana to regulate state incorporated bank holding companies and their subsidiaries, it is impossible to understand how Petitioners can validly contend, as they did in the Trial Court and in the Court of Appeals, that Act 275 may not constitutionally apply to national banks, even though they are subsidiaries of state incorporated bank holding companies, on the grounds that Congress had preempted the field. Respondent does not contest the proposition that national banks are instrumentalities of the Federal Government and are subject to the paramount authority of the United States. Further, Congress certainly had the power, if it wished to utilize it, to bar the applicability of state law in the field of national bank subsidiaries of state bank holding companies. The fact of the matter is, however, that Congress not only did not bar the applicability of state law, but specifically reserved to the states the right to legislate in the field. If there was ever any doubt about this reservation of states' rights in the field of bank holding companies and their subsidiaries, it was completely eliminated by this Honorable Court when it dismissed for want of a substantial federal question the appeal of the decision of the Illinoi Supreme Court in the case of *Braeburn Securities Corporation v. Smith*, 15

Ill.2d 55, 153 NE2d 806 (1958). In that case Illinois passed a state bank holding company act (Ill. Rev.Stat. C16-1/2, §§71-76 [1961]), a statute very similar in purpose, language and effect to Louisiana Act 275. Braeburn Securities Corporation sued the State Auditor of Illinois in the Illinois courts, contending that the statute was unconstitutional and void insofar as it applied to national bank subsidiaries of a holding company. In rejecting such contentions and upholding the statute as constitutional and a proper state regulation of Illinois' incorporated holding companies and their subsidiaries pursuant to the rights reserved by the Federal Bank Holding Company Act, the court stated at page 808, et seq.:

> "The brief summary of the 1957 Act . . . clearly manifests a legislative determination that future ownership and control of banks in Illinois by bank holding companies must be stopped . . .
>
> "Banking is a business peculiarly affected with a public interest. Local autonomy of banks serving the individual and commercial needs of a community has been . . . the policy of this State since the 1929 amendment to the Illinois Banking Act . . . enacted following the passage by Congress of the McFadden Act which, in effect, permitted the states to determine whether State or national banks operating within a State might maintain branches. Branch banking in Illinois has been prohibited for many years.
>
> "It is clear that this prohibition could be circumvented and indirect branch banking result if, through ownership of bank stock, one or more bank holding companies could control several

banks. Branch banking can be accomplished by one bank operating at several locations or by one company owning and controlling several banks variously located.

"In 1956, Congress adopted legislation regulating bank holding companies (12 U.S.C.A. §1841, et seq.), *and provided, among other things, that its action should not impair the then jurisdiction of the States, and further specifically provided that administration of the Federal Act should be within the confines of State law, if any. The Illinois legislation, as well as legislation in New York, New Jersey, Pennsylvania and Indiana, is an acceptance of the suggestion implied in the Federal Act that the States should act if, as a matter of policy, bank holding company legislation more restrictive than the Federal Act was desired by the States. Further, it seems clear that such State legislation could be applicable to national as well as State banks, since the Congress did not manifest an intent to pre-empt the legislative field.*" [Emphasis supplied.]

The Court further stated at page 811:

"The public policy of Illinois prohibits branch banking, and this Act merely regulates these . . . companies to limit further encroachment on that prohibition."[7]

When the *Braeburn* case reached this Court, the defendant, the State Auditor of Illinois, filed a motion to dismiss for want of a substantial federal question,

[7] The decision of the Supreme Court of New Hampshire in Opinion of the Justices, 151 A2d 236, was to the same effect.

and this Court in a *per curiam* opinion in 1959 (359 US 311) granted the motion.

It is clear beyond cavil from the Senate Report covering the Federal Bank Holding Company Act that §7 was included to specifically reserve to the states jurisdiction over bank holding companies and their subsidiaries. In the United States Code and Congressional News, 1956, at page 2492 the Senate Committee Report states:

> "In any event, another provision of this bill expressly reserves to the States a right to be *more restrictive regarding the formation or operation of bank holding companies* within their respective borders than the Federal authorities can be or are under this bill. *Under such a grant of authority, each State, within the limits of its proper jurisdictional authority, may be more severe on bank holding companies as a class than (1) this bill empowers the Federal authorities to be, or (2) such Federal authorities actually are in their administration of this bill.* In the opinion of the Committee, this provision adequately safeguards States rights as to bank holding companies." [Emphasis supplied.]

Under the National Bank Act (12 USC 26, 27) the Comptroller of the Currency is charged with the duty of determining whether a banking association "is lawfully entitled to commence the business of banking", and may not issue a Certificate of Authority "whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate

object contemplated by this Chapter". In view of the enactment of Act 275, the fact that §3(5) thereof rendered it unlawful for a banking subsidiary of a bank holding company to open for business, and the Comptroller's clear statutory duty not to authorize a bank to open which was not "lawfully entitled to commence the business of banking", Respondent respectfully suggests that the District Court properly enjoined the Comptroller from carrying out his announced intention of issuing a Certificate of Authority to Whitney Jefferson.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals (as well as the decision of the Trial Court) is so clearly correct that the petitions for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE.

I HEREBY CERTIFY that a copy of the foregoing brief has been served on the Petitioners, through their attorneys of record, by placing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

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New Orleans, Louisiana, February ....., 1964.

BENTLEY G. BYRNES.

APPENDIX "A"

5. Chapter 12, Title 6, Louisiana Revised Statutes (Codified from Louisiana Act 275 of 1962)

[the section numbers in brackets indicate sections of Act 275 of 1962]:

"An Act

To define the bank holding company, to prohibit the formation of new bank holding companies, and to control the future expansion of existing bank holding companies and of their subsidiaries. [This is the title of the statute as enacted; the title was not codified.]

"[§ 1] § 1001. Declaration of policy.

"It is declared to be the policy of this State to protect and to foster the growth of the independent unit bank, and [sic] institution whose ownership and origins are grounded in the local community and whose activities are bound up with local economic and social organizations; to prevent the undesirable concentration of control in the banking field to the detriment of the public interest; to insure effective competition among all banking institutions; and, to accomplish these objectives by prohibiting the formation of new banking holding companies and the acquisition of control by whatever means of additional banking institutions by existing bank holding companies and by their subsidiaries.

"[§ 2] § 1002. Definitions.

"(A) Bank holding company means any company, foreign or domestic, including a bank,

"(1) which directly or indirectly owns, controls, or holds with power to vote 25 per centum or more of the voting shares of any bank, or

"(2) which controls in any manner the election of a majority of the directors of any bank, or

"(3) for the benefit of whose shareholders or members 25 per centum or more of the voting shares of any bank or a bank holding company is held by trustees; and for the purposes of this Chapter, any successor to any such company shall be deemed to be a bank holding company from the date as of which predecessor company became a bank holding company.

"(B) Notwithstanding the foregoing,

"(1) no company shall be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities and which are held only for such period of time as will permit the sale thereof upon a reasonable basis, and

"(2) no company formed for the sole purpose of participating in a proxy solicitation shall be a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation

"(3) nor shall this Chapter apply to shares acquired by a bank holding company which is a bank, or by any banking subsidiary of a bank holding company, in satisfaction of a debt previously contracted in good faith, but such bank holding company or such subsidiaries shall dispose of such shares within a period of two years from the date on which they were acquired or from the date of enactment of this Chapter, whichever is later.

"(4) nor shall this chapter apply to shares which are held or acquired by a bank holding company which is a bank or by any banking subsidiary of a bank holding company, in good faith in a fiduciary capacity; except where such shares are held for the benefit of the shareholders, of such bank holding company or any of its subsidiaries, or to shares which are of the kinds and amounts eligible for investment by National banking associations under provisions of 12 U.S.C.A. § 24, or to shares lawfully acquired and owned prior to the date of enactment of this chapter by a bank which is a bank holding company, or by any of its wholly owned subsidiaries.

"(C) Company means any corporation, business trust, partnership, association, or similiar organization doing business in this State, but shall not include any corporation the majority of the shares of which are owned by the United States or by any State.

"(D) Bank means any commercial bank, savings bank, trust company or similar organization doing business in this State.

"(E) Subsidiary, with respect to a specified bank holding company, means

"(1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is owned or controlled by such bank holding company; or

"(2) any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or

"(3) any company 25 per centum of more of whose voting shares are held by trustees for the benefit of the shareholders or members of such bank holding company.

"(F) The term "successor" includes any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank.

"[§ 3] § 1003. Prohibitions upon acquisition of bank shares or assets.

"It shall be unlawful:

"(1) for any action to be taken which results in a company or a bank becoming a bank holding company as defined in this Chapter;

"(2) for any bank holding company or subsidiary thereof to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company or subsidiary will directly or indirectly own or control more than 25 per centum of the voting shares of such bank;

"(3) for any bank holding company or subsidiary thereof to acquire all or substantially all of the assets of a bank; or

"(4) for any bank holding company or subsidiary thereof to merge or consolidate with any other bank holding company or any subsidiary thereof;

"(5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not, a charter, permit, license or certificate to open for business has already been issued. Notwithstanding the foregoing, this prohibition shall not apply to additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition.

"[§ 4] § 1004. Penalties.

"Any bank, bank holding company, company, or any subsidiary of any of them which willfully violates any provision of this Chapter, or any regulation or order issued by the State Bank Commissioner pursuant thereto, shall upon conviction be fined not less than $500 nor

more than $1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this Chapter shall upon conviction be fined not less than $1,000 nor more than $5,000 or imprisoned not more than one year, or both.

"[§ 5] § 1005. Administration.

"The State Bank Commissioner shall administer and carry out the provisions of this Chapter and may issue such regulations and orders as may be necessary to discharge this duty and to prevent evasions of the Chapter.

"[§ 6] § 1006. Savings clause.

"Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of any existing law, nor shall anything herein contained constitute a defense to any action, suit or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct."